FILE COPY

72-8 2

DEC 8 1972

IN THE

SUPREME COURT OF THE UNITED STATES

No. 72-8 2

JAMES BRADLEY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF FLORIDA FIRST DISTRICT

DAN R. WARREN
Post Office Box 2265
Daytona Beach, Florida 32015
Attorney for Petitioner

Washington, D.C. • THIEL PRESS • (202) 393-0625

TABLE OF CONTENTS

Page

OPINION BELOW 1
STATEMENT OF JURISDICTION 2
QUESTION PRESENTED 3
CONSTITUTIONAL AMENDMENT INVOLVED 3
THE STATUTES INVOLVED 4
STATEMENT 5
REASONS FOR GRANTING THE WRIT 7
AS TO POINT I 7
AS TO POINT II 9
CONCLUSION 11
APPENDIX A 1a
APPENDIX B 1b

TABLE OF CITATIONS

Cases:

Armstrong v. Manzo, 380 U.S. 545, 552; 85 S.Ct. 1187, 1191 (1965) 7
Bell v. Burson, 91 S.Ct. 1586 (1971) 7
Brown v. Fauntleroy, 442 F.2d 838 (1971) 10
Cooley v. Stone, 134 U.S. App. D.C. 317, 414 F.2d 1213 (1969) 10
Coolidge v. New Hampshire, 400 U.S. 814; 91 S.Ct. 2022 (1971) .....
Ferguson v. Thomas, 430 F.2d 852 (1970) 9
Giordenello v. U.S., 357 U.S. 480; 78 S.Ct. 1245 (1958) 9
Goldberg v. Kelly, 397 U.S. 254; 90 S.Ct. 1011 8

Grannis v. Ordean, 234 U.S. 385; 34 S.Ct. 779 (1914) 7

Maxwell v. Blount, 250 So.2d 657 (Fla. App. 1st, 1971) 6

Snidach v. Family Finance Corp., 395 U.S. 337; 89 S.Ct. 1120 (1969) 8

Sosa v. Board of Managers, 437 F.2d 173 (5th Cir. 1971) 8

State Ex Rel Hardy v. Blount, 261 So.2d 172 (Fla. 1971) 6

State v. James Bradley, 265 So.2d 532 6

Williams v. Dade County School Board, 441 F.2d 299 (5th Cir., 1971) 8

Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct. 587 8

Statutes and Constitutional Provisions:

28 U.S.C. Sec. 1257(3) 3

United States Constitution

Fourth Amendment 4

Fourteenth Amendment 4

23 F.S.A. §901.06, p. 62 4

Florida Criminal Procedure Rule 1.122 ..... 5, 6

Florida Appellate Rule 4.5(c)(6) 2

IN THE

SUPREME COURT OF THE UNITED STATES

No.

JAMES BRADLEY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF FLORIDA FIRST DISTRICT

Petitioner, James Bradley, prays that a Writ of Certiorari issue to review the judgment of the Appellate Court of the State of Florida, First District, entered in the above captioned case on August 17, 1972, petition for rehearing thereafter denied on October 17, 1972.

OPINION BELOW

The trial Court, the Felony Court of Record for Volusia County, State of Florida, entered a judgment on the 11th day of June, A.D., 1971, printed herein at page

1, Appendix A. The Appellant Court of the State of Florida, First District, rendered its judgment affirming the Trial Court and entered an opinion on August 17, 1972, which is printed herein at pages 1, 2, 3, Appendix B, and is reported at 365 So.2d 532.

Upon petition for rehearing the Appellate Court of Florida, First District, entered an Order denying the same as follows, without further opinion, to-wit:

> "Petition for rehearing and reply thereto having been considered, it is Ordered that the Petition is hereby denied."

on October 17, 1972.

STATEMENT OF JURISDICTION

The Appellate Court of the State of Florida, First District, entered its opinion affirming the Judgment of the trial Court on August 17, 1972. A petition for rehearing was thereafter duly considered by the Court, and denied, without opinion on October 17, 1972.

The Florida Supreme Court is without jurisdiction to consider petitioner's appeal from such adverse decision by reason of the limitations imposed upon it by Florida Appellate Rule 4.5(c)(6), in that the decision of the Florida Appellate Court, First District, does not; (1) effect a class of Constitutional or State officers, or (2) pass upon a question certified by such District Court to be of great public interest, or (3) is in direct conflict with a decision of another District Court of Appeal or of the Supreme Court on the same point of law, so that said decision is a judgment of last resort in the State of Florida. This petition for certiorari is filed within 90 days of the decision of the Court affirming the judgment of the trial Court.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

The Federal questions raised in this appeal are:

POINT I

Does the failure of the Florida Courts to grant to an accused a preliminary hearing, upon demand, after the filing of an information by the Chief Prosecuting Officer of said Court, violate the Fourteenth Amendment dictates of the Constitution of the United States of America which provides that so State shall deprive any person of liberty without due process of law.

POINT II

Does the failure of the Florida Courts to grant to an accused a preliminary hearing, upon demand, after the filing of an information by the Chief Prosecuting Officer of said Court, violate the Fourth Amendment dictates of the Constitution of the United States of America, which provides that "the right of the people to be secure in their persons * * * against unreasonable searches and seizures, shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation."

CONSTITUTIONAL AMENDMENTS INVOLVED

Fourth and Fourteenth Amendments of the Constitution of the United States of America, to-wit:

FOURTH AMENDMENT

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

FOURTEENTH AMENDMENT

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

THE STATUTES INVOLVED

The Florida Statute attempted to be invoked by the Petitioner in his request for a preliminary hearing is Florida Statute 901.06, which provides:

"When the arrest by virtue of a warrant occurs in the County where the alleged offense was committed and where the warrant was issued, the officer making the arrest shall without unnecessary delay take the person arrested before the magistrate who issued the warrant, or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county.

Vol. 23, Fla. St. Ann. Sec. 901.06 at Page 62.

FLORIDA CRIMINAL RULE INVOLVED

Florida Criminal Procedure Rule 1.122, provides as follows:

"Rule 1.122. Preliminary Hearing.

(a) Duty of Magistrate: When the defendant is brought before the magistrate upon an arrest, either with or without a warrant, on a complaint of having committed an offense, the magistrate shall immediately inform him:

1. of the charges against him.
2. of the purpose of the preliminary hearing.
3. of his right to the aid of counsel during the preliminary hearing.
4. of his right to have or to waive such hearing.
5. of his right not to testify, and also caution him that in the event he does testify, anything that he says may be used against him in a subsequent hearing or proceeding."

STATEMENT

The petitioner was charged by direct information, filed by the State Attorney, for the Seventh Judicial Circuit, of Volusia County, Florida, with the alleged criminal offense of Buying, Receiving or Concealing Stolen Property, a felony under the laws of the State of Florida.

The date of the alleged offense was December 15, 1970, and the information was filed January 28, 1971.

No warrant was issued by an impartial magistrate, but seizure of the petitioner was made upon authority of the direct information filed by the Chief Prosecuting Officer of the Felony Court of Record of Volusia County, Florida.

On February 8, 1971, petitioner moved for a preliminary hearing before the Felony Court of Record, claiming a right to a preliminary hearing pursuant to Florida Statute 901.06 and Florida Criminal Procedural Rule 1.122(a)(4), and alleged that a denial to a preliminary hearing violated Defendant's rights granted by the Constitution of the United States.

The petitioner was never taken before a committing magistrate, as requested, but the Felony Court of Record did, on March 20, 1971, arraign defendant upon said charge, enter a plea of not guilty, deny petitioner's motion for preliminary hearing, and set the case for trial two days later, to-wit; March 31, 1971. (R. 6, 18).

The petitioner was tried by jury, and, on April 1, 1971, found guilty, and subsequently sentenced to serve two years in the State Division of Corrections. (R. 291).

The petitioner did, on June 11, 1971, file notice of appeal. (R. 304).

The Appellate Court of Florida, First District, on August 17, 1972, rendered the following decision in the case of *State of Florida v. James Bradley*, 265 So.2d 532, affirming the decision of the trial court:

> "(1) The facts are that the defendant was charged by an information. The Supreme Court of Florida, as well as this court, has held that a probable cause having been found by the filing of an information, the purpose of a preliminary hearing has been met."[1]

---

[1] *Maxwell v. Blount* 250 So.2d 657 (Fla. App. 1st, 1971). *State ex rel Hardy v. Blount*, 261 So.2d 172 (Fla. 1972).

REASONS FOR GRANTING THE WRIT

POINT I

"Does the Failure of the Florida Courts To Grant to an Accused a Preliminary Hearing, Upon Demand, After the Filing of an Information by the Chief Prosecuting Officer of Said Court, Violate the Fourteenth Amendment dictates of the Constitution of the United States of America, Which Provides that No State Shall Deprive Any Person of Liberty Without Due Process of Law."

The primary thrust of the petitioner's claim of an unconstitutional intrusion upon his person as presented within Point I is the Fourteenth Amendment prohibiting against any State depriving a person of liberty without due process of law.

Petitioner claims that the fundamental requisite of due process of law is the opportunity to be heard. In the language of the United States Supreme Court in the case of *Grannis v. Ordean*, 234 U.S. 385; 34 S.Ct. 779 (1914): "It is an opportunity which must be granted at a meaningful time and in a meaningful manner." See also *Armstrong v. Manzo*, 380 U.S. 545, 552; 85 S.Ct. 1187, 1191 (1965).

If a hearing must be given before a driver's license and vehicle registration can be suspended, as was held in the case of *Bell v. Burson*, 91 S.Ct. 1586 (1971), then surely, it would stand to reason that due process demands a preliminary hearing within a reasonable time after an accused has been deprived of his freedom.

If a hearing must be granted before prohibiting the sale of liquor to an individual for one year, as was held in the

case of *Wisconsin v. Constantineau*, 400 U.S. 433, 91 S.Ct. 507, then, it would appear beyond per adventure that due process demands a preliminary hearing after an individual has been charged with an alleged crime by a partial official of the State of Florida.

If a hearing must be held before termination of welfare payments, even though a subsequent hearing was afforded, as was held in the case of *Goldberg v. Kelly*, 397 U.S. 254; 90 S.Ct. 1011, then it would appear to be fair and just to afford such a hearing to an accused who has been deprived of his liberty by the filing of a direct information.

Why would a hearing be required in an action before wages could be garnished, as was held in *Snidach v. Family Finance Corp.*, 395 U.S. 337; 89 S.Ct. 1120 (1969), if a more fundamental right was guaranteed under the Fourteenth Amendment to a preliminary hearing, but denied to petitioner by the Courts of Florida.

Is it reasonable to hold that an individual is entitled to a hearing before he can be suspended from a public school, as was held in the case of *Williams v. Dade County School Board*, 441 F.2d 299 (5th Cir. 1971), and then deny to an accused a corresponding right to a preliminary hearing under a more fundamental right as guaranteed under the Fourteenth Amendment.

And why would our courts hold that before one could be refused admission to a public hospital, that a hearing must be conducted, as was held in the case of *Sosa v. Board of Managers*, 437 F.2d 173 (5th Cir. 1971), if the Fourteenth Amendment did not incorporate a right to be heard, preliminary, to a trial of an individual upon criminal charges, by the mere filing of an information by a partisan State official.

It has even been held that a hearing must first be held before termination of employment on a college faculty, or so said the Fifth Circuit Court of Appeals, in *Ferguson v. Thomas*, 430 F.2d 852 (1970).

If a hearing is required before depriving an individual of rights afforded to him, it would appear beyond question that due process demands a preliminary hearing.

POINT II

"Does the Failure of the Florida Courts To Grant to an Accused a Preliminary Hearing, Upon Demand, of the Filing of an Information, by the Chief Prosecuting Officer of Said Court, Violate the Fourth Amendment Dictates of the Constitution of the United States of America Which Provides That 'the Right of the People To Be Secure in Their Persons * * * Against Unreasonable Searches and Seizures, Shall Not Be Violated and No Warrants Shall Issue but Upon Probable Cause, Supported by Oath or Affirmation.' "

It is petitioner's contention that Fourth Amendment rights, as outlined above, compel a preliminary hearing in cases where the State elects to prosecute upon direct information filed by its Chief regional prosecuting officer.

How petitioner is arrested, whether upon warrant or search warrant, Fourth Amendment rights attach through the Fourteenth Amendment. See *Giordenello v. U.S.*, 357 U.S. 480; 78 S.Ct. 1245 (1958).

The existence of a Fourth Amendment right to a probable cause hearing has been recognized in two opinions of the Court of Appeals for the District of

Columbia. In *Cooley v. Stone*, 134 U.S. App. D.C. 317; 414 F.2d 1213 (1969), the Court held that a juvenile in the custody of a detention home had the right to a probable cause hearing and cited approvingly the following language of the lower Court:

> "No person can be lawfully held in penal custody by the State without a prompt judicial determination of probable cause. The Fourth Amendment so provides and this Constitutional mandate applies to juveniles as well as to adults." 414 F.2d 1213.

In *Brown v. Fauntleroy*, 442 F.2d 838 (1971), the Court found that the same right applied to a juvenile released pending trial to the custody of his Mother. In that opinion the Court emphasized that the basis of the right was in the Constitution and not in the Federal Rules of Criminal Procedure. Of the fact that the accused was not in physical State custody the Court said:

> "The right to be free of a seizure made without probable cause does not depend upon the character of the subsequent custody. Appellant accordingly has the right to have the validity of the seizure determined since he will be called to trial for conduct which lead to the seizure." 442 F.2d at 842.

Recently the Supreme Court overturned a State Court conviction based upon evidence seized under a search warrant issued by the State Attorney General who was the chief investigator and prosecutor in the case. The warrant was held to be invalid under the Fourth Amendment, as well as the Fourteenth Amendment, because not issued by the "neutral and detached magistrate required under the Constitution." *Coolidge v. New Hampshire*, 400 U.S. 814; 91 S.Ct. 2022 (1971).

CONCLUSION

If a prosecuting official cannot properly issue a search warrant in a case he is prosecuting, then it would appear that he is not a proper person for determining the existence of probable cause to hold an accused for trial.

Respectfully submitted,

DAN R. WARREN
Post Office Box 2265
Daytona Beach, Florida 32015

Counsel for Petitioner

APPENDIX A

JUDGMENT AND SENTENCE OF THE FELONY COURT OF RECORD IN AND FOR VOLUSIA COUNTY, FLORIDA, JUNE 11, 1971

THE STATE OF FLORIDA
vs. CASE NO. 1537
JAMES BRADLEY,
Defendant.

You, James Bradley, having had a fair trial by a jury of your countrymen, and having been found GUILTY of the crime of buying, receiving or concealing stolen property (property of over $100.00 value, a felony) the Court now adjudges you to be GUILTY of that offense. What have you to say why the sentence of the law should not be pronounced upon you? Saying nothing: It is the sentence of the law and such is the judgment of the Court that you, James Bradley, be imprisoned by confinement and committed to the custody of the Division of Corrections for a term of Two (2) years, and the Sheriff of Volusia County, Florida, is hereby ordered and directed to deliver you to the Division of Corrections of the State of Florida, with a copy of this sentence, forthwith.

DONE AND ORDERED in Open Court at DeLand, Volusia County, Florida, this 11th day of June, A.D. 1972.

/s/ Uriel Blount, Jr.
Judge Felony Court of Record

APPENDIX B

OPINION OF THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT, AUG. 17, 1972

JAMES BRADLEY, Appellant,	§	
-vs-	§	NO. P-302
STATE OF FLORIDA, Appellee.	§	

District Court of Appeal of Florida,
First District.

August 17, 1972

* * *

JOHNSON, Judge.

This is an appeal from a judgment pursuant to a jury verdict.

The points raised by appellant are (1) does defendant have a right to preliminary hearing * * *

[1] The facts are that the defendant was charged by an information. The Supreme Court of Florida, as well as this Court, has held that a probable cause having been found by the filing of the information, the purpose of a preliminary hearing has been met.[1]

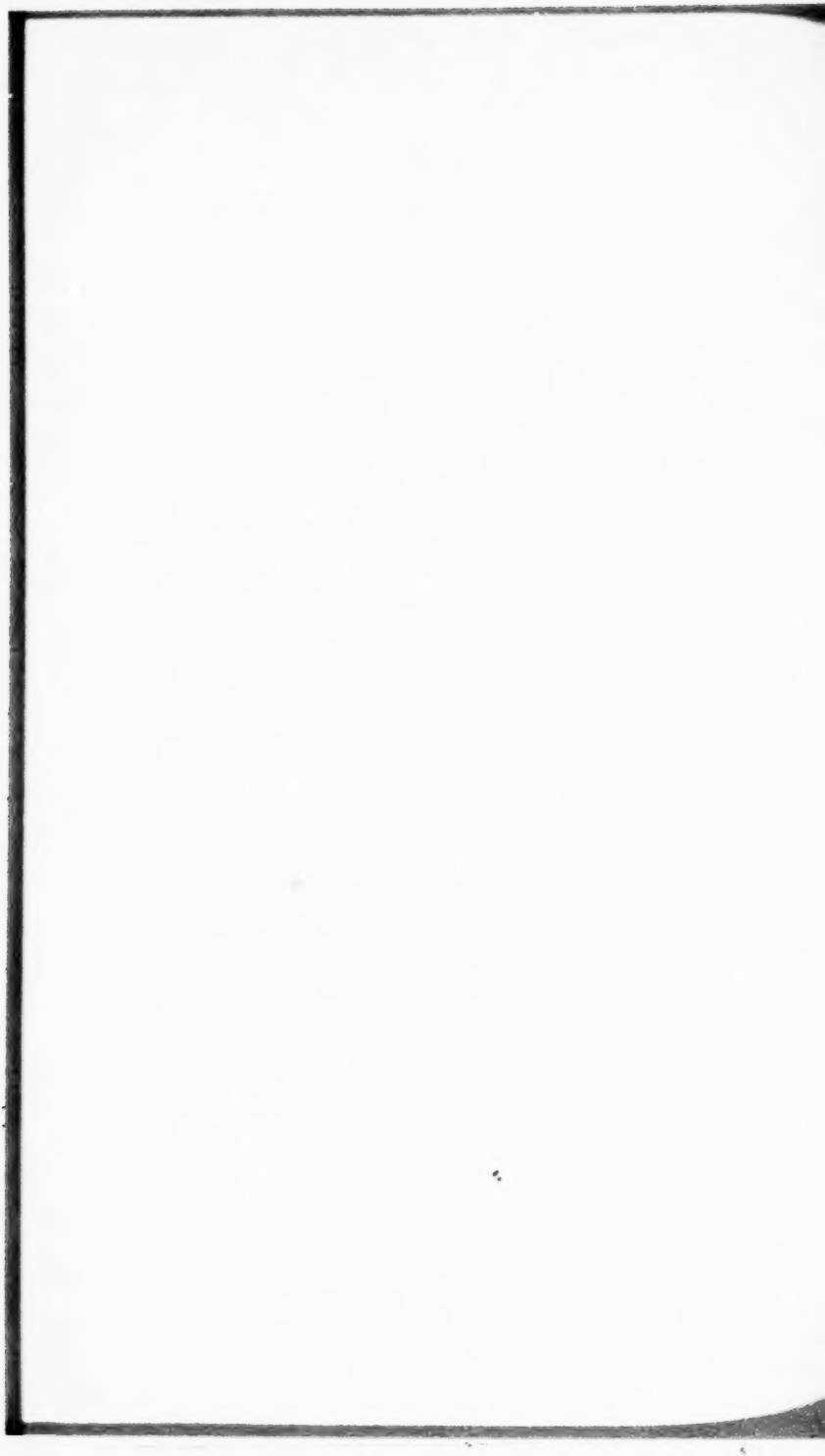
* * *

We see no error in this cause and the judgment and sentence are hereby affirmed.

SPECTOR, C.J., and WIGGINTON, JR., concur

---

[1] *Maxwell v. Blount*, 250 So.2d 657 (Fla. App. 1st, 1971); *State ex rel. Hardy v. Blount*, 261 So.2d 172 (Fla. 1972).



BLEED THROUGH POOR COPY

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JULY TERM, A. D. 1972

JAMES BRADLEY,)
Appellant,)
v.) Case No. P-302
STATE OF FLORIDA,)
Appellee.)

ORDER

Petition for Rehearing and Reply thereto having been considered,

IT IS ORDERED that the petition is hereby denied.

WITNESS the Honorable Sam Spector, Chief Judge, and Seal of the Court this 17th day of October, A. D. 1972.

_____
Clerk